IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9334 of 2004

For Approval and Signature:

HON'BLE MR JUSTICE MR SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARESH I.PARMAR & 11 - Petitioner(s)

Versus

OIL & NATURAL GAS CORPN.LTD. & 4 - Respondent(s)

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Appearance :

MR PRABHAKAR UPADYAY for Petitioner No(s).: 1,2,3,4, 5,6,7,8,9,10,11,12.
MR RAJNI H MEHTA for Respondent No(s).: 1,2.
RULE SERVED BY DS for Respondent No(s).: 3, 4,5.
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CORAM :HON'BLE MR JUSTICE M.R. SHAH

Date : 07/07/2005

ORAL JUDGMENT

Heard. Shri Prabhakar Upadhyay, learned advocate appearing on behalf of the petitioners and Shri Rajni H. Mehta, learned advocate appearing on behalf of the respondents.

2. In this petition under Article 226/227 of the Constitution of India the petitioners have challenged the legality and validity of the judgment and award passed by the Industrial Tribunal, Ahmedabad, 7.4.2004 in Reference (ITC) No. 101 of 1999 in dismissing the same.

3. It was the case on behalf of the petitioners that they were employees of ONGC Ltd and the contract between Modern Multipurpose Labour Cooperative Society was sham and bogus and as the services came to be terminated in the year 1988 they preferred Special Civil Application No. 5839 of 1988. It appears that their contention was that they are employees of ONGC and this Court relegated the petitioners to raise industrial dispute. Thereafter the petitioners

submitted demand and raised industrial dispute. It is the case of the petitioners that in the demand itself they have challenged the termination along with the prayer that the contract is sham and bogus and they are employees of the ONGC and they should be absorbed and their services are required to be regularised with ONGC. It appears that inspite of the aforesaid demand at the time of making a Reference the appropriate authority referred the following disputes;

> Whether the contract awarded by ONGC Ltd. In the "name of M/s. Moden Multipurpose co.op Society Ltd.,was a sham contract and whether the demand of the workmen Shri Naresh I. Parmar & 15 other as par list enclosed engaged by said society contractor for absorption and regularization with the services of ONGC Ltd., with continuity of service and all consequential benefits is fair and justified ? If go to what relief the workmen are entitled to ?"

Thereafter the dispute was referred to the Industrial Tribunal,Ahmedabad being Reference (ITC) No. 101 of

1999. Number of submissions were made on behalf of the parties. However on the aspects regarding absorption and regularization of the petitioners with the ONGC and regarding the contract being sham and bogus, a technical objection was raised on behalf of the respondent ONGC that as the services of the petitioners are already terminated in the year 1988 and unless and until the termination is set aside there is no question of regularization and absorption with ONGC, and the dispute with regard to the termination is not referred to the Tribunal, and unless and until the termination is set aside there is no question of regularization and absorption and therefore it was requested to dismiss the Reference. Accepting the aforesaid contention on behalf of the respondent Corporation the Industrial Tribunal by judgment and award dated 7.4.2004 dismissed the Reference by holding that the dispute with regard to termination was not referred to the Tribunal and considering the ratio laid down in the judgment of the Hon'ble Supreme Court in the case of H.P. Housing Board Vs. Om Pal And Others, reported in

(1997) 1 SCC Page 269 unless and until the termination order is set aside no order with regard to regularization can be passed. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

4. Shri Prabhakar Upadhyay, learned advocate appearing on behalf of the petitioners has vehemently submitted that in the Demand itself there was a Reference to the termination and one of the prayers made by the petitioners before the Conciliation Officer was with regard to termination of 1988 and therefore the Industrial Dispute has materially erred in dismissing the Reference on the ground that the termination order is not challenged. He has also made number of contentions and submissions on the point of contract being sham and bogus, that the petitioners were employees of ONGC; and with regard to absorption with ONGC. However, in view of the fact that this Court is considering the judgment and award passed by

the Industrial Tribunal by which the Industrial Tribunal has dismissed the Reference on the ground that the dispute with regard to termination is not referred and that unless and until termination is set aside there is no question of regularization and/or absorption with ONGC, this Court is not at present considering the submissions and contentions made on behalf of the petitioners with regard to the contract being sham and bogus and their prayer with regard to absorption and regularization with the ONGC.

5. On the other hand, Shri Rajni H. Mehta, learned advocate appearing on behalf of the respondents has supported the judgment and award passed by the Industrial Tribunal. He has submitted that there might be a Demand made by the petitioners before the Conciliation Officer but one has to consider the terms of Reference and the dispute referred to the Industrial Tribunal. He has relied upon the provisions of Section 10 of the Industrial Disputes Act, 1947 [“the ID Act” for short] and has submitted that only those disputes

which are referred to the Labour Court and/or Industrial Tribunal are required to be considered and dealt with by the Tribunal and the Tribunal cannot go beyond the terms of Reference and as the dispute with regard to alleged termination was not referred to the Industrial Tribunal and considering the judgment of Hon'ble Supreme Court of India in the case of H.P. Housing Board (supra) when the Industrial Tribunal has dismissed the Reference accepting the contention on behalf of the respondents that unless and until the termination is set aside there is no question of regularization. It is therefore requested to dismiss the Special Civil Application.

6. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the terms of Reference and the dispute which was referred to the Industrial Tribunal were as to whether the contract awarded by the ONGC Ltd in the name of Modern

Multipurpose Cooperative Society Ltd was a sham contract and whether the demand of the workmen as per the list enclosed by the said society contractor for absorption and regularization with the services of the ONGC with continuity of service and all consequential benefits is fair and justified. There was no dispute referred to the Industrial Tribunal with regard to alleged termination of the petitioners which took place in 1988. Shri Upadhyay, learned advocate for the petitioners has tried to make out a case relying upon the words “continuity of service and all consequential benefits” mentioned in the terms of Reference. But one has to consider the terms of Reference as a whole and one or two words in piecemeal manner cannot be considered. If the terms of Reference is considered as a whole the “continuity of service and all consequential benefits” will go along with absorption and regularization with the services of the ONGC Ltd and the dispute with regard to termination cannot be considered. Under the circumstances, when the dispute with regard to alleged termination was not referred to

the Industrial Tribunal, the Tribunal was justified in not deciding and considering the same considering the provisions of the ID Act more particularly Section 10(4) thereof. The ratio laid down by the Judgment of the Hon'ble Supreme Court in the case of H.P. Housing Board (supra) is to the effect that unless and until the termination is set aside by the competent court no order with regard to regularization can be passed. In the present case also, unless and until the alleged termination is set aside, there was no question of considering the case of the petitioners for absorption and regularization with ONGC. In the facts and circumstances of the case, there is no illegality committed by the Industrial Tribunal in not considering the Reference with regard to absorption and regularization on merits at that stage.

7. Under the circumstances, the present Special Civil Application is required to be dismissed. However, it is observed that it will still be open for the

petitioners to raise an industrial dispute with regard to alleged termination and as and when the same is raised the same can be considered in accordance with law and on merits, and if ultimately the petitioners succeed in event of setting aside of the termination orders, then the question with regard to absorption and regularization with the ONGC and that the contract being sham and bogus can be considered in accordance with law and on merits. As and when the petitioners raise an industrial dispute with regard to challenging the termination, the Conciliation Officer and subsequently the appropriate authority may consider such dispute and refer the same expeditiously or as early as possible. With these observations and directions, the present Special Civil Application is disposed of. Rule is discharged.

[M.R. Shah, J.]

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